

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIKERRAY MIDDLEBROOK,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-827-SLR
	:	
THOMAS CARROLL,	:	
Warden, and CARL C. DANBERG,	:	
Attorney General of the State of	:	
Delaware,	:	
	:	
Respondents.	:	

MOTION TO AMEND ANSWER

Pursuant to Federal Civil Procedure Rule 15, respondents hereby move to amend their answer filed on March 8, 2006. Respondents submit the following in support of the motion:

1. The petitioner, Nikerray Middlebrook, has applied for federal habeas relief, challenging his 1997 conviction by a Delaware Superior Court jury of attempted first degree murder, first degree assault (as a lesser-included offense of attempted first degree murder), two counts of possession of a firearm during the commission of a felony ("PFDCF"), and possession of a deadly weapon by a person prohibited. D.I. 2; *Middlebrook v. State*, 815 A.2d 739, 741 (Del. 2003). Respondents filed an answer addressing the claims in the petition on March 8, 2006. D.I. 10. Due to a technical problem, the last two pages of the answer were inadvertently omitted. *See Amendments to Answer* (attached). The petitioner filed a traverse dated April 5, 2006. D.I. 15. Respondents did not become aware of this omission until a recent review of the file. Respondents now seek to amend the answer to include the two pages mistakenly omitted from the original filing.

2. The two pages omitted from respondents' original answer contain a portion of

respondents' response to petitioner's claim of ineffective assistance of appellate counsel, the answer's conclusion, and the signature of counsel for respondents. Respondents are not seeking to present any "new" defenses or alter any defenses presented in the original answer. The two pages respondents seek to add to the answer were simply the last two pages that were somehow left off at the time of the original filing.

Respondents respectfully request that the court grant respondents' motion for leave to amend their answer.

/s/ Elizabeth R. McFarlan
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Date: September 22, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2006, I electronically filed a motion to amend answer and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on September 22, 2006, I have mailed by United States Service, two copies of the same documents to the following non-registered participant:

Nikkeray Middlebrook.
SBI No. 295569
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

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